IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7715 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIKRAMSINH AYDANSINH SODHA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7715 of 2002

MR PRAVIN GONDALIYA for Petitioner No. 1

MR VM PANCHOLI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/03/2003

ORAL JUDGEMENT

#. By filing this petition, the petitioner-detenu has challenged his detention order dated 26.7.2002. By the

impugned order, the petitioner-detenu is detained in exercise of the powers under section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short), as, the detaining authority found that the detenu is a "bootlegger" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of one criminal case, which is filed under the provisions of the Bombay Prohibition Act. The said detention order is challenged by the petitioner on various grounds.

#. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that the petitioner had made the representation to the detaining authority on 5.8.2002 and the said representation was received by the detaining authority on 14.8.2002. The said representation was ultimately decided by the State Government on 11.9.2002. It is submitted that, in that view of the matter, there is a considerable delay in deciding the representation of the petitioner.

#. Mr.Pancholi, learned AGP, however, submitted that the State Government received the said representation from the detaining authority on 7.9.2002 and the State Government decided the same on 11.9.2002. The question, therefore, which requires consideration is, whether the detaining authority has committed any delay in forwarding the representation of the petitioner to the State Government. The petitioner has averred in the petition the facts about making the said representation to the detaining authority. It is not in dispute that the detaining authority received the said representation on 14.8.2002 and the detaining authority, ultimately, forwarded the said representation to the State Government on 3.9.202. In charge Police Inspector in the office of the Commissioner of Police has informed the petitioner by the letter dated 3.9.2002 that, his representation has been forwarded to the State Government. The said communication is kept on record at the request of the learned advocate for the petitioner.

#. Considering the aforesaid aspect, it is clear that the detaining authority has not forwarded the representation of the petitioner immediately to the State Government, and, it seems that the same was kept pending with it for a long time. Apart from the aforesaid

aspect, the detaining authority has not explained the delay in the affidavit-in-reply. In the affidavit-in-reply, the detaining authority has stated in para 11 as under.:

"With reference to para 4L of the petition, I say that on receipt of the representation dated 5.8.2002, the same was dealt with by me without any delay. Therefore, the contention raised by the detenu in this para is not tenable at law."

However, the detaining authority has not explained as to why the representation of the petitioner was not immediately forwarded to the State Government, which is a most crucial point in order to explain the delay in forwarding the representation. Since the representation of the petitioner was not forwarded immediately by the detaining authority to the State Government and the same was kept pending with it for a long time, this petition is required to be allowed, as, the authority is required to send the representation of the petitioner forthwith without any delay.

#. In view of what is stated above, the petition is allowed. The order of detention dated 26.7.2002 is quashed and set aside. The detenu Vikramsinh Ayadansinh Sodha is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(P.B.Majmudar,J)
(pathan)